

Cases that made a difference: Equal rights for Israel's LGBT community

By Steve Adler

JONATHAN DANILOWITZ was at the center of one of the most publicized civil rights cases concerning LGBT workers.

Danilowitz was born in South Africa on January 13, 1945, and immigrated to Israel in 1971. He was raised in a traditional Jewish family and describes himself as being a “good Jewish boy.” At first, Danilowitz did not realize any same-sex tendencies, but with time he felt that his attraction was to men. In South Africa he had to keep any such feelings to himself, without even his family being aware of them. When he immigrated to Israel he could be open about his homosexual life and connect with people like him. He was chairman of the LGBTQ organization (The Association for LGBTQ Equality in Israel) from 1978 till the mid-1980s, founded the “TEHILA” support group for parents of LGBTQ children and also the Gay Road Runners club, and in 1979 organized a World Congress in Israel of Gay and Lesbian Jewish Organizations.

Danilowitz worked in Israel as a flight attendant for EL AL Airlines, and in time, became a senior in-flight service manager. EL AL’s collective agreement with the Histadrut labor union entitled workers to two free plane tickets each year, one for the worker and one for his or her “spouse.” EL AL’s policy was that a “spouse” can only be a partner of the opposite sex.

When Danilowitz requested a second ticket for his same-sex partner, noting that they had lived together for an extended period in an apartment jointly purchased and had a joint household, his request was denied. After a conversation with EL AL’s CEO, the company gave him a second ticket, but without accepting his right to it and as a one-time exception to their policy. A subsequent request for a second ticket for his same-sex partner was denied.

Danilowitz sued the airline in 1989 in Tel Aviv Regional Labor Court (one of the five Labor Court system’s trial courts) to receive



Jonathan Danilowitz

a second free ticket for his male partner. The court accepted his claim, based upon the general right to equality in Israeli jurisprudence and as set down in the Employment Equal Opportunities Law of 1988. While this law prohibited workplace discrimination on the basis of gender, marriage and parenthood, it did not mention sexual preference. The court was guided by the law’s intent and general policy. In 1992, after the trial court’s judgment, the law was amended to include sexual preference as banned discrimination.

EL AL appealed to the National Labor Court, the appeals court of the Labor Court system, which has jurisdiction over almost all matters relating to the workplace and social welfare issues. At that time I served as the deputy president (chief justice in American terms) of the court. The usual court panel is three professional judges and two public representatives, one from the labor sector and one from the employer sector.

For cases like Danilowitz’s, where a constitutional issue is involved, we sit with a seven-judge panel of three professional judges,

two public representatives from the employee sector and two public representatives from the employer sector. In this case the panel consisted of the court’s senior judges: myself, Menachem Goldberg, the court president, and Judge Yitzchak Eliasoff, as well as impressive public representatives Professors Ruth Ben-Israel, Avraham Abramowitz, Avraham Friedman and Amira Galin.

The appeal hearing was memorable. Detailed briefs had been filed by both sides, the attorneys highlighted the main issues in their presentations before the panel of judges, and the press was present.

EL AL emphasized that the collective agreement only entitled “spouses” to a free ticket. A “spouse” is generally understood as the term for a wife or husband and not a same-sex partner. Until 1988, homosexuality was illegal in Israel (although the law was not enforced), and many gay people were reluctant or embarrassed to admit their sexual preference. The collective agreement could not have intended to consider “spouses” illegal relationships. The 1980s AIDS crisis set gays apart from the regular population, not considering gay couples as “married” or legitimate “spouses.” Even after the illegality was canceled, gay people were not considered a “spouse.” The airline argued that it treated all workers equally by giving them and their spouses free tickets, regardless of whether they are a pilot or a mechanic. Free tickets to employees are a benefit over and above normal working conditions, and should be interpreted narrowly.

Danilowitz’s lawyer supported the trial court’s decision, and emphasized the centrality of the equality principle in Israeli jurisprudence. Equality is especially important at the workplace so that all workers can feel comfortable, and the entire population can be part of the workforce. Also cited was the Employment Equal Opportunities Law of 1988. Workplace equality was the correct policy for a democratic country and also good for

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The writer, Steve Adler, with Danilowitz on an outing.



COURTESY LEAH CHASE

Danilowitz at a Pride Parade with his friend, Leah Chase.

employee morale. Danilowitz's same-sex relationship was no different from common law man-woman couples.

When the panel sat alone in chambers after the hearing, Chief Justice Goldberg asked each member's opinion. My turn came when all the others had said the appeal should be rejected. I was the only religious member of the panel and since gay couples are not recognized by Orthodox Jewish law, my

colleagues were not certain what I would decide. I said the appeal should be rejected and added that the second ticket benefit granted by the collective agreement meant that Danilowitz should be entitled to use the ticket to travel with any travel companion, such as his mother or father. People's private life is their own business, but at the workplace all are equal.

So the National Labor Court handed down a unanimous judgment in 1992 rejecting EL AL's appeal, and declared that the company was required to give Danilowitz a second ticket, for use by his partner who traveled with him. EL AL petitioned the Supreme Court against this judgment, but that was also rejected by that court in a 1994 judgment.

The judgment of my court and the Supreme Court made waves in Israeli society, including articles in many newspapers, in Israel and abroad (the NY Times reported it, as did other international papers) and influenced the atmosphere at many workplaces. The case was important for the dignity of all people in the workplace. The ability of all types of people to feel comfortable and dignified in the workplace results in a stronger economy, which allows workers to develop their skills and contribute. Receiving the second free plane ticket from his employer gave Danilowitz a feeling of recognition for himself and the LGBTQ community. Giving thousands of EL AL workers two tickets and only Danilowitz and a few other LGBTQ workers one ticket would have been a terri-

ble blow to his dignity and connection to his fellow workers.

I am sometimes asked what made me, as an Orthodox Jew, happily married for over 50 years, rule in favor of a gay couple. One professor and member of parliament said he violently opposed the judgment, and would promote a law to change such recognition of gays.

For me, however, the decision was clear. I was taught respect for all people at home. Judaism teaches respect for minorities. My personal background and religious beliefs influenced me during my entire career on the bench. Growing up in the United States of the 1950s and 1960s, I absorbed the principles of the great US Supreme Court justices, some of whom were Jewish. At Cornell and Columbia, professors such as Milton Konvitz, Jack Weinstein and Telford Taylor taught about fundamental human rights. The importance of equality and a workplace comfortable for all types of workers was strengthened by the Israeli Supreme Court and National Labor Court judgments, which are till today a guiding light to me and others around the world.

In 1973, President Zvi Bar Niv wrote the National Labor Court's judgment, which was the first Israeli judgment guaranteeing equal treatment for women. That judgment was handed down prior to the equal opportunity laws and woman's rights legislation. It declared discriminatory, against public policy and invalid a clause in the EL AL collective agreement allowing the company to discharge female flight attendants if they married or became pregnant.

I also remembered my college days at Cornell (1958-1962), when I took part in events supporting Martin Luther King and equality for African Americans. Only when I was criticized for doing this did I realize the extent of prejudice in the US. I was proud that Jewish leaders and laypeople were willing to support efforts to ensure equal opportunity for everyone.

There is also a great irony to this case. I did not know Danilowitz and had never met him, until my wife and I moved to a retirement village outside of Jerusalem in 2019. Low and behold, my new neighbor, Jonathan Danilowitz, came to welcome me. He was unaware that I sat in his case, but since then we have spoken on the radio and in public about it. ■

The writer is a former president of the National Labor Court.